MEMORIAL

TO HIS EXCELLENCY

ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES.

CONCERNING RINCON POINT,

SAN FRANCISCO, CALIFORNIA.

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TO HIS EXCELLENCY, ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES.

The Memorial of the undersigned, citizens of the United States, and residents of the City and County of San Francisco, State of California, respectfully shows to your Excellency—

That, on the 30th day of August, 1865, by the direction of the Secretary of the Treasury, Delos Lake, Esq., United States Attorney, in the name of the United States of America, commenced an action of ejectment against your memorialists in the United States Circuit Court, to recover possession of a tract of land called Rincon Point, consisting of between thirteen and fourteen acres of valuable property bordering on the water front of San Francisco, and the whole of which, with the exception of a small portion upon which the United States Marine Hospital is situated, has been purchased and improved by, and is in the possession of, your memorialists.

Under ordinary circumstances, your memorialists would be content to abide the usual course of the litigation in which they have thus suddenly been involved; but, believing that it can be conclusively shown that there is no foundation for the claim made on the part of the United States, and that there is no national object for which the property in question could be appropriated; knowing that they have bought and improved in good faith, and at a heavy cost, the portions of the property of which they are now respectively possessed; and considering that it cannot be the design of the Government to oppress its citizens or to speculate at their expense, and that protracted litigation would injuriously affect the interests of

your memorialists and of the community of which they form a part; they deem it proper to present to your Excellency the incontrovertible facts and circumstances connected with the case, and to ask your Excellency, in the exercise of your Executive discretion, to order the discontinuance of the action.

The asserted title of the United States to the land in dispute, is based upon the hypothesis that some eighteen years ago, three years before the admission of California into the Union, when San Francisco was but a small and torpid Mexican town, and when its present opulence and commercial importance had been scarcely anticipated, "Rincon Point" was legally set apart as a Government Reserve. To the historical facts connected with, and to the principles of law applicable to, that attempted reservation, your memorialists now propose to direct your Excellency's attention.

On the 10th of March, 1847, nearly a year before the date of the treaty of Guadalupe Hidalgo, California was partially occupied by the military forces of the United States; and, on that date, the late General S. W. Kearney, then Brigadier General, and acting as Military Governor, with headquarters at Monterey, issued his proclamation, purporting to convey to the town of San Francisco all the right, title and interest of the United States, and of the Territory (so-called) of California, in and to the beach and water lots on the east front of the town, and between the points known as "Rincon" and "Fort Montgomery;" expressly excepting, however, such lots as might be afterwards selected by officers of the army and navy, for the use of the United States, and coupling with the attempted grant certain conditions, to be performed by the town, to which it is unnecessary to refer.

On the 23d of June, 1847, Major General Sherman, then First Lieutenant in the 30th Artillery, and Assistant Adjutant General, acting under the authority of Colonel Mason, directed Major James A. Hardie, who was in com-

mand at San Francisco, to select lots for the use of the United States in conformity with the terms of General Kearney's proclamation, and to notify such selections to the Alcalde, or Chief Magistrate.

On the 18th of July, 1847, Major Hardie informed George Hyde, then Alcalde of San Francisco, that, in accordance with instructions, he had reserved for the use of the United States, so much of Rincon Point as at that time was not divided into lots, and as was marked "Government Reserve" on the "Map of the Beach and Water Lots of San Francisco, A. D. 1847," then on file in the Alcalde's office.

The map alluded to by Major Hardie, which is still preserved in the Archives of San Francisco, was drawn from notes of surveys made by Jasper O. Farrell, and represents the so-called "Government Reserve" as an irregular point of land projecting into the bay, and as consisting mainly of upland, and embracing but a small portion of beach and water property. The Reserve was again delineated upon a map made by W. M. Eddy, in 1850; but, after that time, no trace of its existence is to be found on the official maps of San Francisco, and it has been uniformly regarded as having been abandoned by the Government.

On the 1st of May, 1849, General Keyes, then Captain Keyes of the 3d Artillery, assumed command of the post of San Francisco; and, on the 9th of August following, he was directed by Major Canby, Assistant Adjutant General, to mark out the Government Reserves, and to adopt measures to prevent unauthorized persons from trespassing upon them. It does not appear that he was successful in the performance of either of these duties; and, on the 27th of November of the same year, he executed a lease for a term of ten years, in favor of one Theodore Shillaber, which covered the land in dispute, and was subsequently approved by General Riley; but your memorialists have not been able to discover that

Shillaber ever fulfilled the conditions of the lease, or that he ever went into possession of any portion of the land, either in person or by tenants. On the contrary, it is notorious that there has been no period since the original selection of the Reserve, when nearly the whole of it, save the Hospital property, has not been possessed and occupied by parties holding in direct antagonism to the United States, or in ignorance of the fact that the Government made any claim to their property.

The information from which this chronological statement has been compiled, was derived from the Archives of the Military Department of the Pacific, and, as your memorialists believe, the statement embodies every essential and authentic fact relative to the origin and character of the alleged title of the United States to the property involved in the present controversy. It may also be important to observe that an official and historical letter by General Keyes, upon the subject of the Government Reserves in San Francisco, dated July 10th, 1852, and addressed to Major O. Cross, Quartermaster in the U. S. Army, discloses the fact that the action of the military officers in selecting the Reserve at Rincon Point, was never approved by Congress, nor by the President of the United States.

The asserted title of the Government has never been recognized either by the State of California, or by the City and County of San Francisco, or its corporate predecessors, and the Government has never been in possession of the property, but on the contrary, for at least sixteen years, has acquiesced in its occupation and improvement by persons holding in their own right, and has never interrupted their possession, either by entry or by legal proceedings, until the present action was commenced. Assuming the title of the United States to have had any validity in its origin, your memorialists submit, as a proper matter for consideration by your Excellency, that these facts were calculated to mislead parties possessing capital

and enterprise, and thus to produce a complication of valuable interests, the destruction of which would be most injurious to the community, and most oppressive to individuals.

Having thus succinctly stated the facts upon which the hypothesis adopted to justify the proceedings taken in behalf of the United States, depends, your memorialists next invite your Excellency's attention to the legal attitude of the Government as exhibited by those facts. It is, of course, an indisputable proposition that, if the United States has any title to the property in dispute, there must have been a legal and duly authorized reservation out of lands of which the United States was the proprietor at the time the reservation was made.

When the proclamation of General Kearney was issued, the Government had no right or title to any portion of the ground covered by the present City of San Francisco.

It will be remembered by your Excellency that the so-called Rincon Point Reserve, although mainly consisting of upland, embraced also a quantity of land within the ebb and flow of the tide, and designated upon the official maps, and in the records of San Francisco, as "beach and water lots."

Upon the admission of California into the Union (9 *United States Statutes*, pages 452, 453), the title to that part of Rincon Point included within the latter category, passed to, and became vested in, the newly-created State, and was wholly unaffected by any antecedent action upon the part of the United States.

(*Pollard's Lessee* vs. *Hagan, et al*, 3 Howard's U. S. Supreme Court Reports, page 230.)

And in 1847 the title to the upland was held by the town or pueblo of San Francisco, in trust, for the benefit of the inhabitants, was subsequently protected by the treaty of Guadalupe Hidalgo, and has been fully vindicated and maintained by judicial authority, after the

favor of Theodore Shillaber, the Supreme Court of California say (*Friedman* vs. *Macy*, 17 California Reports, 229): "It is contended, *and seems to be conceded*, that this lease was originally void;" and again (*Burr* vs. *Dana*, 22 California Reports, 21), the fact that "the reservation had no legal existence," is recognized.

And the Legislature of California, as will hereafter more fully appear, conveyed the beach and water property to the city of San Francisco and its grantees, and ratified and confirmed the conveyance by the latter of portions of the upland property. And, in addition to its acquiescence for more than sixteen years in the adverse holding of the premises now demanded, the United States admitted the insufficiency of its own claim and recognized the superior title of San Francisco, by taking from the latter, on the 11th of December, 1852, a deed of that portion of the alleged Reserve on which the United States Marine Hospital is situated, of which portion, about that time, the Government acquired possession.

But, if General Kearney's proclamation had possessed any force or validity, still, it was confined by its terms to "beach and water property," and the action of Major Hardie in selecting upland, was, therefore, unauthorized and ineffectual.

Besides, there was no definition of boundaries or acts of possession, by which the tract selected could be accurately identified. In this respect, the alleged Reserve at Rincon Point presents a marked contrast to the other Reserves made in San Francisco on account of the Government, the latter having been described by streets, and to a considerable extent, reduced to actual possession.

As the demandant in actions of ejectment must recover, if at all, upon the strength of his own title, and having shown by irrefragable evidence, extracted from the repositories of the Government itself, that the United States has no title, either derived from possession, or in any other manner, to the property now claimed, your memor-

ialists might well rest their application to your Excellency at this point, and ask to be relieved from the damaging effect upon the interests of those assailed, which legal proceedings by the Government against its own citizens, however groundless, must ever produce.

But your memorialists are so confident in the strength of their position, in a legal, equitable and moral point of view, that they prefer to make a complete disclosure of the facts upon which their defence to the present action is based.

It has already been shown that, when California was added to the Federal Union, the title to the property in question, was vested in the State and in the city of San Francisco, the former owning that portion within the ebb and flow of the tide, and the latter the remainder or upland part of the tract.

On the 26th of March, 1851, the Legislature of this State passed an Act (*Statutes of California*, 1851, page 307, *et seq.*), establishing a permanent water front for the city of San Francisco, and granting to the City and to its grantees, according to their interests, the use and occupation of all the beach and water lots within the designated line, for the term of ninety-nine years. Subsequently, under Acts passed in 1853 and 1855, (*Statutes of California*, 1853, page 219, *et seq.* 1855, pages 226, 227), the reversionary interest of the State was sold and conveyed, and several of your memorialists, or their predecessors in interest, became purchasers and grantees.

It thus appears, that the title to the whole property in dispute, became vested in the city of San Francisco, and the grantees of the City and of the State, and in 1851, 1852, 1853, and 1856, the interest of the city in the greater portion of the tract was sold and conveyed under various executions, and your memorialists have acquired the title of the purchasers and grantees.

At the time of the sales referred to, and until the year 1860, it was supposed that any of the property of the

city, not required for municipal purposes, could be levied upon and sold under execution; but, in that year, in the case of *Hart* vs. *Burnett*, previously quoted, the Supreme Court decided that the upland, which was held in trust for the benefit of the inhabitants, was not liable to involuntary alienation, and that the deeds of the Sheriff covering property of that character, were null and void. In the same year, however, the sales and conveyances of beach and water lots under execution, were sustained.

(*Holladay* vs. *Frisbie*, 15 California Reports, page 630, *et seq.*)

The effect of these decisions was that your memorialists, or their predecessors in interest, were deprived of the title which the deeds of the Sheriff had purported to convey, to the upland portion of the tract in question; and, of course, could not recover from the creditors of the City, the money they had paid.

By an Act of the Legislature of California, passed May 1st, 1851, (*Statutes of California*, 1851, page 387, *et seq.*), the funding of the floating debt of the City of San Francisco was authorized; and to provide for its payment, a commission was created, to whom certain property of the City, including the land now claimed by the United States, was conveyed in trust to be sold, and the proceeds applied to that purpose. As much of the property so conveyed was held adversely to the City, on the 14th of April, 1862, another Act was passed, (*Statutes of California*, 1862, page 217, *et seq.*), which authorized the Commissioners to compromise and settle the claims to such property, and to make conveyances thereof; and, under this Act, your memorialists have acquired the title of the City.

On the 20th of June, 1855, the common council of San Francisco, passed an ordinance known as the "Van Ness Ordinance," granting and releasing, with certain exceptions, which are of no consequence here, all the right, title and interest of the City, to the occupants of land

within the then chartered limits of San Francisco. This ordinance, which by its terms applied to the whole of Rincon Point to the actual water front, was ratified and confirmed by the Legislature in 1858, (*Statutes of California*, 1858, page 52, *et seq.*), and the constitutionality and binding force of the act of ratification was declared by the Supreme Court in the case of *Hart* vs. *Burnett*, already cited. Your memorialists come within, and are protected by, the provisions of the ordinance mentioned.

The result of the foregoing representation, is to prove conclusively that the United States has no title whatever to the so-called Reserve; and that your memorialists own the several parcels thereof claimed and possessed by them, by title acquired as follows:—

As to the beach and water lots:

1—By grants from the City.

2—By grants from the State.

3—By conveyances upon sales under executions against the City.

4—By possession.

As to the upland portion:

1—By conveyances from the Commissioners of the Funded Debt.

2—By occupation under the Van Ness Ordinance.

3—By possession.

This presents with sufficient fairness the legal aspects of the question, and shows how utterly groundless and vexatious are the proceedings taken in the name of the United States. But, there are other arguments which can be appropriately pressed upon your Excellency's attention, and which appeal with great force to your Excellency's discretion.

The sales of the interest of the State in the beach and water lots, and the sales under execution against the City, took place at comparatively early periods in the history of California; but, at those periods, speculative excite-

ment had inflated the prices of real estate in San Francisco to an unnatural degree, and large sums, amounting, as your memorialists confidently believe, to hundreds of thousands of dollars, were paid by the purchasers. To obtain conveyances from the Commissioners of the Funded Debt, under the Act of 1862, your memorialists were also compelled to pay not less than ten per cent., and often a much greater percentage, of the assessed value of the property conveyed. And, in addition to the last payment, referred to, your memorialists have paid full value for their interests to the parties from whom they purchased, and may justly claim that the property has been improved at an expense which cannot be correctly estimated, but which a million of dollars would not cover; that it has contributed its full share to the support of the National, State, and Municipal Governments, and, that, in common with the rest of the real estate in San Francisco, it has formed so fruitful a subject for ruinous litigation that, after having met and vanquished their individual opponents, and after having reached a point where they reasonably expected to enjoy the proceeds of their industry and enterprise, your memorialists may well shrink and tremble when they find themselves suddenly confronted by the Government to which they looked for protection and support, rather than for the exhibition of speculative rapacity, into which it has unfortunately and innocently been betrayed.

Your memorialists, with scarcely an exception, have actively participated in the development of this great State, and of the commercial metropolis in which they live and with which their interests are permanently identified. They came to California when its population was sparse, its resources almost untouched—its history a blank. They have endured the severe privations, and passed through the intense struggles, incident to the growth of all new communities. They have lived to see the energy, the industry, and the intelligence, of the

American people, and the power and virtue of this Government, represented on these shores by more than a million of inhabitants, by a society and by institutions in harmony with the advanced civilization of the age, by a material progress almost unequalled, by a history, the product of sixteen years, which forms one of the themes of mankind. And, now, after having passed through these eventful scenes, and after having supported their Government in all the dangers by which it has been beset, they ask to be permitted peaceably to enjoy that which they have honestly, laboriously, and with great sacrifices, acquired, and to which they are lawfully entitled, and that the power and influence of the Government they have labored to support, may not be wielded for their oppression and to their injury, by uselessly precipitating them into harassing and expensive litigation.

Your memorialists, therefore, respectfully request your Excellency, after such investigation into the facts embodied in this memorial as your Excellency may consider proper, to order the dismissal of the action which has been brought against them.

And your memorialists have the honor to be,

Your Excellency's obedient servants,

Charles W. Hathaway,
George P. Baker,
D. D. Colton,
J. D. Risdon,
C. S. Simpson,
Henry Taylor,
Caroline Smith,
D. McNiel,
D. Gaven,
S. Grosh,
G. T. Pracy,
S. L. Mastick,
S. H. Wetherbee,
C. F. Jones,
Martin,
J. P. Taylor,
J. F. Taylor,
Brown,
Thomas Blackmore,
R. Bragg,
N. P. Perine,
N. Winslow,
Amos, Phinney & Co.,
Thomas Johnston,
Sammes.